IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9461 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRIRAJSINH @ GIRUBHAI HARUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/02/2000

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 9-6-1999 passed by

respondent No. 2 - The Commissioner of Police, Rajkot against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, interalia indicate that in 8 prohibition cases are registered against the petitioner at Rajkot Prohibition Police Station in between 29-6-97 to 21-5-99 and country made liquor was seized in each case. That six cases are pending for trial while two cases are pending for further investigation.

#. That on the basis of the said material, the respondent No. 2 - The Commissioner of Police, Rajkot as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner forthwith from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the petitioner is released on bail in each of the case. However, before passing the impugned order, the detaining authority has failed to consider the aspect of claiming cancellation of bail as available under Section 437(5) of CrPC which discloses non application of mind.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of papers, it appears that in the grounds of detention, the detaining authority has mentioned in

para 7 that the detenu has been released on bail from time to time and again engaged himself in the anti social activities like bootlegging which amounts to disturbing the public order, and thereby, the detention order is necessary. It is nowhere stated in the grounds of detention that inspite of taking step to claim cancellation of bail, the bail of the detenu is likely to continue or it was not likely to be cancelled and thereby, the detention order is necessary.

#. In view of the same, the detention order cannot be sustained and deserves to be quashed and set aside.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 9-6-99 passed by respondent No. 2 - The Commissioner of Police, Rajkot against the petitioner is hereby quashed and set aside. The petitioner - GIRIRAJSINH @ GIRUBHAI HARUBHA GOHIL is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 28-2-2000 [A.K.Trivedi, J.]

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